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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2021

CORAM :

THE HON'BLE MR. JUSTICE T.RAJA
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.664 of 2018

C.Kumar ... Appellant
Versus

P.Sivasubramaniam ... Respondent

Prayer : First Appeal filed under Section 96 r/w Order 41 Rule 1 and Order 42 Rule 1 of Civil Procedure Code, against the Judgment and Decree dated 28.02.2018 in O.S.No.159 of 2015 of the learned II - Additional District and Session Judge, Tiruppur.

For Appellant : Mr.V.Nicholas
For Respondent : Ms.C.Meena

JUDGMENT

(The Judgment of this Court was delivered by
Mr.Justice.D.Bharatha Chakravarthi)

This Appeal suit is filed by the unsuccessful defendant in the suit in O.S.No.159 of 2005 on the file of the Learned II Additional District and Sessions Judge, Tiruppur, wherein by Judgment dated 28.02.2008, the Trial Court decreed the suit filed by the plaintiff and directing the appellant herein to pay a sum of Rs.25,75,000/- to the plaintiff/respondent herein, along with further interest and principal amount of Rs.15 Lakhs, at the rate of 9% per annum from the date of plaint, till the date of decree and at the rate of 6% per annum from the date of decree, till the date of realization.

2.The case of the plaintiff/respondent before the Trial Court is that after obtaining a loan by way of cash for a sum of Rs.15 Lakhs, the appellant /defendant executed a promissory note under Ex.A1, dated 06.06.2012, promising to repay the principal along with interest at the rate of 24% per annum. The



appellant/defendant duly signed the said promissory note and also affixed his left thumb impression. Since no amount was repaid, either towards principal or interest, the plaintiff caused a legal notice on 25.05.2013. Upon receipt of the same, the defendant caused a reply dated 25.02.2013, feigning ignorance of the respondent / plaintiff and completely denying the transaction and requested for forwarding the copy of the alleged promissory note.

3. In response, thereof, the plaintiff caused re-joinder notice on 06.06.2013, thereby denying the false allegations in the reply and also forwarding the copy of the promissory note. To the said notice, once again, a reply dated 08.06.2013 was issued by denying the borrowal and stating that the promissory note was forged and fabricated. Therefore, the plaintiff proceeded to file the suit on 02.06.2015.

4. Upon filing of the suit, the defendant filed an application in I.A.No.853 of 2015 to refer the promissory note for expert for verifying signature in the promissory note by comparing it with the admitted signature. However the same was dismissed by the Trial Court on 05.01.2016. Thereafter, on 04.02.2016, the defendant filed a written statement, denying the transaction and the signature. It is his further submission that he had enmity with one Rangasamy who carried on a partnership real estate business with him and after the business had fallen down the said Rangasamy by making use of the signature of the appellant / defendant made during the course of the real estate transaction, has caused the plaintiff to institute the suit. The Trial Court framed the following issues:-

"1. Whether the promissory note dated 06.06.2012 is true, valid, genuine and acted upon?

2. Whether the plaintiff is entitled to get a relief as prayed for?

3. To what relief the parties are entitled to? "

5. The plaintiff examined himself as PW.1, One Velayutham, who was the witness of promissory note, as PW.2, One Saminathan, who is a scribe, who wrote the promissory note as PW.3. Apart from marking the promissory note as Ex.A1, on behalf of the plaintiff, the office copy of the legal notice was marked as Ex.A2 and the acknowledgment card as Ex.A3. The reply notice issued on behalf of the defendant was marked as Ex.A4. The re-joinder notice dated 06.06.2013 issued by the plaintiff was



marked as Ex.A5 and the reply to the re-joinder notice dated 08.06.2013 was marked as Ex.A6. On behalf of the defendant, the defendant viz., Kumar examined himself as DW.1 and marked certified copy of the sale deed dated 27.02.2013 as Ex.D1.

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6.The Trial Court, after hearing both sides, had found that, first the plaintiff has got into box as PW.1 and the documents were duly marked and he deposed about the lending of the money. In support of evidence of PW.1, the attesting witness, who had witnessed the defendant borrowed the money, was examined as PW.2 and the scribe of the promissory note was also examined as PW.3, who have all categorically deposed about the borrowal of money by the appellant / defendant. The Trial Court found that even though the appellant / defendant disputed the signature, he has not let in any clear cut evidence to prove the same. Even though, he had filed an Interlocutory application, after dismissal of the same, he had not taken any further steps. Further, there was also deficiency in the application filed by him. The plaintiff also forwarded a copy of the promissory note to him along with re-joinder notice. He had not taken any steps by preferring any criminal complaint if such forged promissory note was sought to be enforced against him. Further defense of the appellant that his actual name is R.Kumar, but, his signature in the promissory note is signed as C.Kumar and therefore, the promissory note is forged, was rejected by the Trial Court by relying upon the evidence of DW.1 himself, stating that in the cross-examination he has stated that only the name is mentioned as C. Kumar but the signature is made as R.Kumar, only. Therefore, the Trial Court rejected the defense of the appellant / defendant and decreed the suit with 9% pendelitte interest and 6% interest post the decree.

7.Aggrieved by the same, the present appeal has been filed. In the memorandum of grounds of the appeal. The appellant / defendant has raised grounds stating that:

i) the Judgment of the Trial Court is against law and probabilities of the case,

ii) that the defendant has categorically denied the execution of the said promissory note and thumb impression, therefore, the burden is on the plaintiff to establish the same;

iii) the plaintiff has filed a suit after the period of two years of the reply notice;

iv) The onus is upon the plaintiff, to send the promissory note for comparison of signature and the defendant has marked the document viz., sale deed, to show the admitted signature. Therefore, in the absence of the above steps not taken, decreeing of the suit was incorrect in law.



8. Heard Mr.V.Nicholas, learned counsel for the appellant / defendant and Ms.C.Meena, learned counsel appearing for the respondent/plaintiff.

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9. On behalf of the appellant, learned counsel would primarily raised two grounds:

a) Firstly, when the defendant has denied the signature in the promissory note, it was for the plaintiff, to establish the same and in this case, the plaintiff has miserably failed to take steps to refer the promissory note for comparison of signatures by way of expert opinion and in the absence of the same, the Trial Court ought to have dismissed the suit. Further, in this case, even though it was not the onus of the defendant, the appellant / defendant himself had filed an application, which was rejected by the Trial Court on the ground that it was for the plaintiff to prove the promissory note. Therefore, in these circumstances, the plaintiff had miserably failed to prove the promissory note and consequently, the decree of the trial court is liable to be reversed.

b) His second submission is that the conduct of the plaintiff is not normal. When the defendant had issued reply notice, totally denying the transaction and alleging that the promissory note is a forged one, the normal reaction of any reasonable man, would file the suit immediately. According to him, even though the reply to the rejoinder of notice was issued on 08.06.2013, the suit was filed only on 02.06.2014, therefore, the same would also demonstrate that there was no borrowal at all and the suit is an abuse of process of law.

10. Per contra, the learned counsel appearing for the respondent would draw the attention of this Court, to the signature of the defendant in the proof affidavit filed by him and comparing the same, with the signature found in Ex.P1 / promissory note, would submit that it is crystal clear even to the naked eye that it was the signature of the appellant which is found in the promissory note. It is only the appellant / defendant who had executed the promissory note and the same was duly proved by examining the attesting witness. The Trial Court is not bound to refer the promissory note for comparison of signature, just on the frivolous and bald plea of denying the signature. She would further submit that the suit for recovery of money is filed within the period of limitation. Therefore, she would contend that the suit has been rightly decreed.



11. Upon hearing the parties, the following questions arise for consideration in this appeal :-

1. Whether or not, the plaintiff has proved Ex.P1/promissory note and whether the absence of comparison of the signature at the instances of the plaintiff would disentitle the plaintiff of the relief ?

2. Whether or not, the filing of the suit after two years of the issue of the rejoinder notice, would raise any reasonable doubt about the borrowal of money ?

Question No.1 :

12. At the outset, it needs to be reiterated that once the execution of the promissory note /Ex.P1 is proved by the plaintiff and there is no contra evidence let in by the defendant to rebut the presumption under Section 118 of N.I. Act, it would be presumed that the promissory note was executed for valid consideration. Now, therefore, the question is whether the plaintiff has proved the execution of Ex.A1/ promissory note. In our opinion, the plaintiff has done so for the following reasons:-

a) Apart from examining himself as PW.1, the attesting witness was examined as PW.2 and the scribe of the promissory note was examined as PW.3 and they were corss examined in detail and no favourable answers could be elicited by the defendant/appellant;

b) the defendant had issued a reply notice on 24.05.2013 and thereafter, reply to rejoinder was issued on 08.06.2013. On both these occasions, he did not raise the defense that one Rangasamy had set up the plaintiff as binami and using his signature in the real estate transaction, the promissory note is sought to be enforced. In the written statement, which was very belatedly filed, after a period of one year of the suit, alone the defense is raised, which points out the same as frivolous in nature;

c) It is the defense of the defendant that the signature contained in Ex.A1/promissory note is signed as C.Kumar, whereas, he used to sign as R.Kumar. This is factually wrong. It is only the name of the appellant / defendant, which is wrongly mentioned as C.Kumar, because, he has also mentioned his father name as 'Chinnasivanmalai alias Raj' . However on a perusal of Ex-P1, it is clear that signed appears only as R.Kumar and the said fact duly admitted by the defendant in the cross-examination;



d) The appellant/defendant had filed his proof affidavit in this case on 08.01.2018. The signature in Ex.P1/promissory note and the signature in the proof affidavit of the appellant / defendant, on a comparison, can be found as similar. In this regard, when the defendant was cross-examined by the plaintiff, the defendant answered as follows:-

"... இம.எண்.1203/2016ல் உள்ள மனு மற்றும் பிரமாணப் பத்திரிக்கையில் உள்ள கையெழுத்து என்னுடையதல்ல..."

Therefore, apprehending the plaintiff would compare the signatures in Ex.P1/promissory note with that of the signature contained in the proof affidavit, the defendant has gone into the extent of denying the signature in the proof affidavit filed by him, through his own advocate before this Court. In such view of the matter, we find that there was no necessity for the plaintiff to send Ex.P1/promissory note for comparison of signatures. For the above reasons, we answer the question number one in favour of the plaintiff/respondent and against the appellant / defendant.

Question No.2 :

13.As far as the second question is concerned, so long as the suit is filed within the limitation, in a suit for recovery of money, mere delay in filing the suit, when it is within the period of limitation, is immaterial, as any plaintiff would repeatedly attempt and insist the defendant to pay the money and he would avoid filing of the suit by paying further Court fees and approaching the Court. Therefore, the arguments of the learned counsel for the appellant does not merit any consideration and hence, rejected.

14.In view of our findings, we confirm the findings of the Trial Court, in respect of issue no.1, that promissory note dated 06.06.2012 is true, genuine and acted upon. We also confirm the findings of the Trial Court in respect of issue no.2 that the plaintiff is entitled to get the relief of recovery of the sum of Rs.25,75,000/- with further interest on the principal sum of Rs.15 Lakhs at the rate of 9% per annum, from the date of plaint and till the date of decree and at the rate of 6% per annum from the date of decree, till the date of realisation. We also find that the appellant / defendant has deposited 50% of the decree amount, pursuant to the interim order passed by this Court, which we hold that the respondent / plaintiff will be entitled to withdraw the same.

15.Accordingly, we order the Appeal Suit, on the following terms :-



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(i) The Appeal Suit is hereby dismissed and the Judgment and Decree of the Trial Court / II - Additional District and Sessions Judge, Tiruppur in O.S.No.159 of 2015, dated 28.02.2018 is confirmed;

(ii) that the defendant shall bear the costs of the respondent of the appeal, in addition to the costs of the suit.

(iii) The respondent / plaintiff will be entitled to withdraw the sum deposited by the appellant / defendant to the credit of the suit in O.S.No.159 of 2015, along with accrued interests.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

klt

To

1. The II - Additional District and Session Judge, Tiruppur.

+1 CC to Mr.V.Nicholas, Advocate sr 68371

+1 CC to Mr.M.Guru Prasad, Advocate sr 68736.

A.S.No.664 of 2018

VSNII (CO)

SP(14/02/2022)